

SRC APPROVED

Date Aug 9, 2012  
ETM

## State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

July 12, 2012

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative  
Doug Misner, History Representative  
Betsy Ross, Auditor's Office Representative  
Ernest Rowley, Elected Public Official  
Patricia Smith-Mansfield, Governor's Designee  
Scott Whittaker, Private Records Manager

Legal Counsel: Paul Tonks, Attorney General's Office  
Amanda Jex, Attorney General's Office  
Ed Lombard, Attorney Generals Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Rosemary Cundiff, Archives staff  
Glen Fairclough, Archives staff  
Jesse Gallegos, Board of Pardons  
Eric Todd Johnson, Cedar Hills, Respondent  
Gina Proctor, Corrections, Respondent  
Sharel Reber, AG's Office  
Natalie Tonks, AG's Office

**Ms. Betsy Ross called the meeting to order at 9:30 a.m.** Ms. Ross explained the procedures to the two parties. Andrew McCullough introduced himself as the petitioner.

### **Hearing – Andrew McCullough vs. Department of Public Safety, Drivers License Division**

#### **Opening statement – petitioner**

Mr. McCullough said since 1973 he had been a trial lawyer in the State of Utah and he was currently the Libertarian candidate for Attorney General in the State of Utah. He said that Utah had a statute concerning impounding a motor vehicle for a violation of the law regarding controlled substances. The statute said that if the owner of the vehicle could show by a letter or report that no person lost their license as a result of the incident, the impound fee of \$330.00 would be refunded. He said he had run into a bureaucratic wall. The Drivers License Division acknowledged the law but refused to disclose if any action was taken. He said he knew that no one

had their license suspended as a result of the impound. The division said that providing personal identifying information would violate federal law. Personal identifying information, according to the criminal code under identity fraud crime, is defined as name, birth date, address, telephone number, driver's license number, etc. Mr. McCullough said he was not seeking that information. He wanted a refund of his money. The only personal identifying information that was relevant was the driver's name which was in the police report. All he wanted was a statement that on the 26<sup>th</sup> of March, 2012, no one had their license suspended as a result of the car being impounded. He said he was not claiming the car was stolen, but that it was driven without his permission. Someone got Mr. McCullough's car impounded through their fault not his. He was the one being punished rather than the person who was driving. He said coming before the Committee was an exercise in futility and he planned to take the division to court.

#### **Opening statement – respondent**

Ms. Lana Taylor introduced herself. She represented the Department of Public Safety, Drivers License Division. She said under the Uniform Drivers License Act, Title 53 chapter 3, the Drivers License Division is given the authority to suspend a license. A license is the privilege to drive a motor vehicle in the State of Utah, as defined in 53-3-102(17). Even if an individual had previously been granted the privilege to drive or if administrative action had been taken by the division, the Drivers License Division could still take a broad range of administrative actions. State code and administrative rules govern the division's actions. When the division is notified that a person has violated one of the provisions in the statute, an adjudicative procedure is begun to potentially take administrative action against an individual's driving privilege. If administrative action is not appropriate and no action will be taken, a letter of no action is issued. Mr. McCullough requested this letter. If the Drivers License Division had taken no action, there would have been a no action letter issued. In response to Mr. McCullough's request for the letter, the division reviewed its records and determined that no such letter existed. The request was denied. There was no letter for him to take to the Motor Vehicle Division to get his impound fee refunded.

#### **Testimony – petitioner**

Mr. McCullough said he would like the person sitting to the right of Ms. Lana Taylor sworn as a witness. Ms. Ross put Mr. John Fairbanks, of the Drivers License Division, under oath as a witness. Ms. Taylor said any questions concerning information about an individual's driving record would be objected to by the Department of Public Safety. Mr. McCullough asked Mr. Fairbanks to provide his job description. Mr. McCullough asked Mr. Fairbanks if he had access to information about individual driving records as a result of an impound or a DUI. Mr.

Fairbanks answered in the affirmative. Mr. McCullough asked if Mr. Fairbanks had determined if any action had been taken against anyone as a result of the impound of his car on March 26, 2012. Mr. Fairbanks answered in the affirmative. Ms. Taylor objected to Mr. Fairbanks answering the question. Ms. Taylor asked Mr. Fairbanks if the division had a no action letter responsive to Mr. McCullough's request. Mr. McCullough asked what records the division did have. Ms. Taylor objected to the question as the answer could reveal the status of an individual driver's driving license status. Ms. Ross asked if a notice of agency action was available as a public record. Ms. Taylor said a letter had been sent relating to the status of the individual's license. A police report of any unlawful action would have been sent to the Drivers License Division in a timely manner and administrative action could be taken against an individual's license regardless of any action taken by the court.

#### **Testimony -- respondent**

The original request came from Mr. McCullough on March 30, 2012, and the request was clarified on April 3, 2012, with the addition of a name, Keshon R. Woods. The record which relates to the Drivers License Division contains his name along with his entire driver's license status information. Even with the name redacted, a person's driver's license record reveals personal identifying information. The definition of personal identifying information found in 18 US Code 27-25 includes: photo, social security number, driver ID number, telephone number, name, and medical or disability information. UCA 53-3-109 in the state code lists what information is considered private. No information relating to a specific vehicle is kept as part of the driver's license record. It would be available in a police report of an incident that prompted administrative action. Mr. Hemphill asked how common no action letters were. Mr. Fairbanks responded that several thousand no action letters were produced in a year.

#### **Testimony -- petitioner & respondent**

Mr. McCullough said it appeared quite possible that the Drivers License Division had taken some action based on what he had learned during the hearing. He said he had received a report that Mr. Woods had never had a driver's license. If that were the case, the division would have no power to suspend a license. If they had no power to suspend anything then they took no action. Ms. Taylor said action could be taken against a future license. If no action was taken against a driver's license, when the statute specifically stated license rather than privilege, then no action was taken by the division and Mr. McCullough was entitled to a refund of the impound fee. Mr. McCullough said the statute said "written evidence" that no action was taken against the driver's license. It did not specify a letter. Any written evidence would serve the purpose. Mr. Whittaker asked if correspondence was created to answer questions from the public. Ms. Taylor said any time the word license was used in statute, it meant the

privilege to drive a motor vehicle. Whether Mr. Woods had a license or not was immaterial. The division had the authority to suspend, revoke or deny a license for any individual. The division had no written evidence that action was not taken against the driver of Mr. McCullough's vehicle. Ms. Taylor said there were other records that related to Mr. Wood's driving privileges relating to this incident. By disclosing a record, even with the name redacted, the division would be disclosing personal driving status.

#### **Closing – petitioner**

Mr. McCullough said it was the first time in four months he had heard a statement clarifying the Drivers License Division's response to his request. He said he had no closing argument. Mr. McCullough left the hearing.

#### **Closing – respondent**

Ms. Taylor said that even if the existing records were provided directly to the Tax division, it did not appear that Mr. McCullough would be eligible to receive a refund of the impound fee.

#### **Deliberation**

Ms. Smith-Mansfield said other records existed about the incident involving Mr. Woods. Mr. Rowley said the documentation provided for the hearing included an impound report with the license number of the vehicle, the owner's name and the name of the driver. Federal code restricted access to driver's license information. Mr. Tonks read the federal statute. Pursuant to USC 18-27-25(3), the Drivers Privacy Protection Act, a state department of motor vehicles could not disclose any personal information about any individual obtained by the department in connection with a motor vehicle record. Mr. Whittaker made a motion that the records were properly classified based on the federal code, but the non-personal information related to the vehicular incident, driving violations, and driver's status should be released. Ms. Smith-Mansfield seconded the motion. Mr. Hemphill made a motion that the Committee go in camera to review the record. Mr. Rowley seconded the motion. A vote was taken. Mr. Hemphill, Mr. Rowley, Mr. Misner, and Mr. Whittaker voted in favor of the motion. Ms. Ross and Ms. Smith-Mansfield voted against the motion. The motion passed. The Committee went into closed session.

#### **Closed session – 10:50-11:03**

##### **Open session**

The Committee returned to open session. Mr. Hemphill indicated that the action items 1, 3, and 5 should be specifically noted in the motion. The release of information should be limited to those items. Ms. Smith-Mansfield affirmed her second. A vote was taken on the original motion

with the amendment. Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Ross, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed unanimously. Ms. Ross said a decision would be issued within seven days and sent to the parties.

### **Hearing – Mark Haik vs. Salt Lake City**

Mr. Russell Vetter represented Salt Lake City as senior attorney. He said he had no information about why Mr. Haik's was not present. Several matters were pending concerning GRAMA requests by Mark Haik. Mr. Vetter said the matter of jurisdiction should be interpreted by the Mayor's appeal board. From Mr. Haik's point of view, Mr. Vetter said, the city had not complied with the order of the Mayor's Appeal Board. Clarification about that issue from the city's board was needed. Mr. Vetter speculated that because the issue would not proceed before the State Records Committee until that was done, Mr. Haik did not attend. Two other matters were scheduled with the State Records Committee hearing for August 9, 2012. A meeting was held with Ms. Meeker, the City Recorder, Mark Haik, and Mr. Boyd Ferguson to talk about a letter delivered by the Haiks in which they had filed an appeal with both the city and the State Records Committee. The city had not received notice of that appeal. It was determined in the meeting that the appeal would go directly to the SRC on August 9, 2012. Another issue, scheduled for July 13, 2012 was to be considered by the city's records board. That matter may be appealed. Procedurally there was confusion. Ms. Ross proposed that the jurisdictional issue be addressed. Mr. Misner said he had worked with Mr. Haik in the History Research Room. He said he did not think it would have an impact on his ability to hear any appeal. Mr. Vetter said he had no objection to Mr. Misner's participation.

### **Opening – respondent**

Mr. Vetter said the city's position was that the SRC would eventually consider whether the redactions made by the city were appropriate under GRAMA. The redactions all concerned attorney-client privilege under 63G-2-305(16), (17), and (18). The city's records committee made the decision that the redactions had been too broad. The city's position was that relating to invoices, the redactions were appropriate. The content of the invoice, describing what the attorney did was privileged under the three provisions. Unredacted were: the date, the attorney's name, the time spent, the dollar amount, and the other expenses incurred by the law firms. The city's board asked for specific reasons for redactions. All the redactions related to pending or anticipated litigation. Mr. Vetter indicated a stack of unredacted attorney billings that had been provided to Mr. Haik. An interpretation of what the city's board intended by their order would be more appropriately decided by that board. After that, an appeal to the State Records Committee may not be necessary. The right of the city to appeal its own city records board decision had been affirmed in other instances.

He argued that the city had the right to appeal the city's records board decision.

### **Deliberation**

Mr. Rowley made a motion that the Committee had jurisdiction. The city's ordinance outlined a procedure a petitioner must follow in order to appeal to the State Records Committee. After the Mayor's Appeals Board had heard an appeal it could come to the State Records Committee or to District Court. After discussion, Mr. Rowley withdrew the motion. Mr. Hemphill made a motion that the city board should clarify the decision they made and until they did, it was untimely for the State Records Committee to hear it. Mr. Whittaker seconded the motion. A vote was taken. The motion passed unanimously. Ms. Ross said an order would be issued within seven days. Ms. Smith-Mansfield added a quotation from the Salt Lake City ordinance. It stated that any party to the proceedings before the city's appeal board could petition for review of the board's decision to the State Records Committee or to District Court.

### **Calendaring**

The date of the next meeting was discussed. Ms. Ross said she would not be able to attend. Mr. Hemphill would serve as chair pro tem. Mr. Rowley was unsure of his schedule. Ms. Smith-Mansfield was not sure of her schedule. August 9, 2012 was the scheduled date for the next meeting. If Mr. Daniels could attend, a quorum would be possible.

### **Minutes**

Mr. Hemphill made a motion to approve the minutes of June 15, 2012. Mr. Whittaker seconded the motion. A vote was taken. Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Ross, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed unanimously. The minutes of June 15, 2012 were approved.

### **Retention schedules**

Mr. Glen Fairclough said there had been a request from Washington County for a retention schedule for burning permits. Two records series 1988 a one year retention schedule was approved for West Valley City. In 2005, a seven year retention schedule was approved for state lands. Most counties and municipalities keep this type of record. A proposed general schedule is three years. Mr. Hemphill made a motion to approve the schedule. Mr. Misner seconded the motion a vote was taken. The vote was unanimous in the affirmative.

### **Committee vacancies**

Ms. Mumford reported that a private sector records manager representative had applied. A citizen representative had yet to apply.

**Appeals to the State Records Committee**

Ms. Mumford distributed a list of appeals received during the month. See attached list. Two hearings were scheduled so far for August 9, 2012.

**Cases in District Court**

Paul Tonks reported on cases in district Court. He said Judge Medley was retiring. Therefore, much of the schedule had been changed. See attached report.

**Other business**

The scheduled meeting for August 9, 2012 would proceed with a quorum if Judge Daniels and Ms. Smith-Mansfield could attend. Issues regarding any interface between the Ombudsman and the Committee would be a topic of discussion for the next meeting. Ms. Smith-Mansfield said there should not be an interface between the ombudsman and the Committee. Between April 10, 2012 and July 10, 2012, the ombudsman received 326 contacts and conducted six mediations.

**Adjournment**

The Committee was adjourned by acclamation at 11:48 a.m. The next meeting is scheduled for August 9, 2012 at 9:30 a.m.

# **STATE RECORDS COMMITTEE**

**July 12, 2012**

**State Archives Building, Courtyard Meeting Room  
346 S. Rio Grande (450 West)  
Salt Lake City**

## **AGENDA**

**Call to Order 9:30 a.m.**

**Hearing: Andrew McCullough vs. Drivers License Division, Department of Public Safety.** Mr. McCullough is appealing the denial of access to the Driver's License of a person who drove his car when the car was impounded.

**Hearing: Mark Haik vs. Salt Lake City.** Mr. Haik is appealing the partial denial of records requested from Salt Lake City.

## **BUSINESS**

- 1. Approval of June 15, 2012 SRC Minutes, action item**
- 2. Retention Schedules for approval, action item**
- 3. Update on Committee vacancies, action item**
- 4. SRC appeals received**
- 5. Cases in District Court**
- 6. Other Business**

## **ADJOURNMENT**

Next meeting scheduled for Thursday, August 9, 2012, at 9:30 a.m.



**SRC Appeals Received  
July 2012**

1. **Gregory Williams vs. UDC.** Mr. Williams wanted the committee to investigate a grievance about improper disclosure of his private records. No jurisdiction. Wrote letter.
2. **Bobby Archuleta vs. UDC.** Appeal incomplete. Wrote letter.
3. **Karl Losee vs. UDC.** Mr. Losee is appealing the denial of the minutes of the warden's meeting of November 3, 2008. Appeal incomplete. Wrote letter
4. **Karl Losee vs. UDC.** Housing assignments. Wrote letter of denial. Approved by Betsy and Doug
5. **Edward Owens vs. Davis County Courts.** No jurisdiction. Wrote letter.
6. **Ross George vs. UDC.** Hearing August 9, 2012
7. **Mark Haik vs. Salt Lake City.** Hearing August 9, 2012
8. **Bill Oram/Tribune vs. Granite School District.** Scheduled for September
9. **Common Cause vs. Uintah County.** Scheduled for September
10. **Eric Probasco/Sanpete Messenger vs. Department of Public Safety.** Scheduled for September
11. **Moses Shepherd vs. UDC.** Medical records and fee waiver
12. **Janelle Stecklein/Tribune vs. UTA.** Database of crimes and locations. Time frame issue waiting for Board of Trustees decision
13. **Michael Gubarev vs. Workforce Services.** Untimely appeals later response appealed to SRC.
14. **Michael Luesse vs. UDC.** Limit of 100 pages from UDC
15. **Steven Sanchez vs. Tax Commission.** Wants sales tax information on prison commissary.

## **July 2012 Records Committee Case Updates**

### **District Court Cases**

**Utah Dept. of Human Services v. Wilson**, 3<sup>rd</sup> District, Salt Lake County, Case N. 120903186, Judge Medley, filed May 10, 2012.

**Current Disposition:** Complaint filed by Human Services, answers filed by the Committee and Wilson. Answer filed by Wilson raised issues outside of the appeal filed by Human Services. June 5, 2012, Human Services filed a "Motion to Strike, or in the Alternative, for More Definite Statement."

**Thomas v. Utah Dept. of Corrections**, 3<sup>rd</sup> District, Salt Lake County, Case No. 110919927, Judge Maughan.

**Current Disposition:** Appeal dismissed by Court on July 9, 2012 for failure to serve defendants within 120 days of filing the Complaint.

**Attorney General Office. v. Schroeder**, 3<sup>rd</sup> District, Salt Lake County, Case No. 110917733, Judge Hansen, filed Sept. 21, 2011; Case No. 110917703, Judge Medley, filed Sept. 20, 2011.

**Current Disposition:** Oral argument is set for Sept. 6, 2012, 9:00 AM for cross motions for summary judgment filed by the Attorney General Office and Schroeder.

**Salt Lake City v. Jordan River Restoration Network**, 3<sup>rd</sup> Judicial District, Salt Lake County, Case No. 100910873, Judge Himonas. Filed June 18, 2010.

**Current Disposition:** Only pleading filed during the past six months was a notice of appearance of new counsel on behalf of Jordan River.

**Burning Permits (CNT 22-?? And MUN 26-??)**

These are permits issued under Utah Code 11-7-1(2)(a), 65A-8-211(2)(a), 65A-8-211(4)(a), and 65A-8-211(6)(a), and Rule R307-202 to authorize the burning of yard or agricultural waste. Burn permits often are separated into agriculture burns and non-agricultural burns (referred to as open burn permits).

**RETENTION:**

3 years and destroy

**SUGGESTED PRIMARY DESIGNATION:**

Public